

**Amendment No. 2 to HB0130**

**Fitzhugh  
Signature of Sponsor**

**AMEND Senate Bill No. 113**

**House Bill No. 130\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. It is intent of the general assembly that the provisions of this act shall not lessen or diminish salaries levels or retirement benefits established for licensed personnel as of the effective date of this act.

SECTION 2. Tennessee Code Annotated, Section 49-5-602, is amended by deleting subdivisions (6), (9), (11) and (12) in their entirety and by substituting instead the following:

(6) "Memorandum of agreement" means a written memorandum of understanding arrived at by the representatives of the board of education and a teachers' union, which shall be presented in its entirety to the board of education and to all professional employees covered by the memorandum, whether members of the teachers' union or not, for ratification or rejection;

(9) "Negotiator" means the person or persons selected by the board of education and the recognized professional employees' organization to do the negotiating. The board may select the director of schools, any member of the board or any member of the management team. The professional employees' organization may select from among those who are members of the organization; provided, that the organization shall not select more members than the number selected by the board of education;

(11) "Professional employee" included any person employed by the local board of education in a position that requires a license issued by the department of education for service in public elementary and secondary schools of this state, supported, in whole or in part, by local, state or federal funds, but shall not

include any member of the management team or a retired teacher who is employed as a teacher in accordance with title 8, chapter 36, part 8;

(12) "Professional employees' organization" means any organization with membership open to professional employees, as defined in subdivision (11), in which the employees participate and that exists for the purpose of promoting the professional status and growth of educators and the welfare of students. The organizations may establish reasonable rules and regulations for conducting business, including provisions for the dismissal of individuals from membership;

SECTION 3. Tennessee Code Annotated, Section 49-5-602, is amended by adding the following language as new, appropriately designated subdivisions:

( ) "Management team" means employees who devote a majority of their time to the systemwide area or areas of professional personnel management, fiscal affairs or general management and principals, assistant principals, supervisors and others whose principal responsibilities are administration rather than teaching;

( ) "Supervisor" means any professional employee of a local board of education whose full-time job responsibilities consists of oversight of other professional employees or curriculum development or both;

( ) "Teachers' union", "union" or "recognized professional employees' organization" means a professional employees' organization that, in addition to promoting the professional status and growth of educators and the welfare of students, is recognized under § 49-5-605 to negotiate with a local board of education concerning, but not limited to, grievances, wages, hours of employment or conditions of work;

( ) "Working conditions of professional employees" or "terms and conditions of professional service" means those fundamental matters that affect a professional employee financially or the employee's employment relationship with the board of education;

SECTION 4. Tennessee Code Annotated, Section 49-5-611, is amended by adding the following language as a new subsection (c):

(c) The following conditions of employment shall not be subject to negotiations between the board of education and the teachers' union:

(1) Differentiated pay plans and other incentive compensation programs, including stipends, and associated benefits that are based on professional employee performance which is above expectations or that aid in hiring and retaining highly qualified teachers for hard to staff schools and subject areas;

(2) Expenditure of grants or awards from federal, state or local governments and foundations or other private organizations;

(3) Evaluation of professional employees pursuant to federal or state law or state board of education policy;

(4) Salaries, benefits, staffing decisions and state board of education or local board of education policies relating to innovative educational programs under § 49-1-207, innovative high school programs under title 49, chapter 15, virtual education programs under title 49, chapter 16 and other programs for innovative schools or school districts that may be enacted by the general assembly; and

(5) All personnel decisions concerning assignment of professional employees, including, but not limited to, filling of vacancies, assignments to specific schools, positions, professional duties, transfers within the system, layoffs and reductions in force, and recall. No agreement shall include provisions that require personnel decisions to be determined on the basis of seniority or length of service.

SECTION 5. Tennessee Code Annotated, Section 49-3-306(h), is amended by deleting the language "and in compliance with § 49-5-611" and by adding the following sentence at the end of the subsection:

Differentiated pay plans or incentive compensation programs and their associated benefits developed under this subsection after the expiration of any contract negotiated before July 1, 2011, between a local board of education and a teachers' union pursuant to the Education Professional Negotiations Act, title 49, chapter 5, part 6, that contains provisions concerning differentiated pay plans or incentive compensation programs or if no such contract exists, on or after July 1, 2011, shall not be subject to negotiation under the Education Professional Negotiations Act.

SECTION 6. Tennessee Code Annotated, Section 49-5-608, is amended by deleting the section in its entirety.

SECTION 7. Tennessee Code Annotated, Section 49-5-607(a), is amended by deleting the language "bearing the signatures of a majority of the professional employees" and by substituting instead the language "bearing the signatures of thirty percent (30%) or more of the professional employees".

SECTION 8. Tennessee Code Annotated, Section 49-5-605(b)(4), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(4) A majority vote of those eligible to vote shall be required to secure representation by a professional employees' organization. The secret ballot shall provide for a person to vote for no representation by any professional employees' organization.

SECTION 9. Tennessee Code Annotated, Section 49-5-605, is amended by deleting subsection (c) in its entirety and by substituting instead the following language:

(c)

(1) The initial recognition shall be for twenty-four (24) months.

The recognition may be extended for additional twenty-four (24) month periods if, between October 1 and October 15 of the second twelve (12) months of any recognition period, the teachers' union demonstrates that a majority of the professional employees of the local board of education belong to the union as full dues paying members. The union's

demonstration shall be made by showing that the number of members whose dues are paid through payroll deduction plus the number of members who pay dues through methods other than payroll deduction is greater than fifty percent (50%) of the total number of the local board's professional employees. A member's payment of dues by means other than payroll deduction shall be verified through proof of receipt of payment.

(2) If a teachers' union fails under subdivision (c)(1) to demonstrate that a majority of the professional employees of the local board of education belong to the union as full dues paying members, then the teachers' union may not submit a new request for recognition under subsections (a) and (b) before October 1 of the next year.

SECTION 10. Tennessee Code Annotated, Section 49-5-609(a), is amended by deleting subdivision (4) in its entirety and by substituting instead the following:

(4) Refuse to permit a professional employees' organization to have access at reasonable times before or after the instructional day to areas in which professional employees work, to use institutional bulletin boards, mail boxes or other communication media or to use institutional facilities as permitted by a local board's policy or procedure for community use at reasonable times for the purpose of holding a meeting concerned with the exercise of the rights guaranteed by this part;

SECTION 11. Tennessee Code Annotated, Section 49-5-609(b), is amended by adding the following language as a new subdivision (8):

(8) Coerce or attempt to intimidate professional employees who choose not to join the recognized bargaining organization.

SECTION 12. Tennessee Code Annotated, Section 49-5-611(a), is amended by adding the following sentence at the beginning of the subsection:

A local board of education shall be required to negotiate with the recognized professional employees' organization only those conditions of employment for which the responsibility or performance requires the professional employee to be licensed by the department of education.

SECTION 13. Tennessee Code Annotated, Section 49-5-611, is amended by adding the following language as new, appropriately designated subsection:

( ) The director of schools shall be permitted to communicate with professional employees employed by the local board of education concerning any subject relevant to the operation of the school system, including conditions of professional employees' employment that are within the scope of negotiations, through any means, medium or format the director chooses.

SECTION 14. Tennessee Code Annotated, Section 49-5-612(b), is amended by deleting the following language:

If either governing authority rejects or modifies any part of a proposed memorandum, the matter shall be returned to the parties for further negotiation.

SECTION 15. Tennessee Code Annotated, Section 49-2-301(b)(1)(EE), is amended by deleting the language ", board policies and locally negotiated agreements" and by substituting instead the language " and board policies".

SECTION 16. Tennessee Code Annotated, Section 49-2-301(b)(1)(EE), is further amended by deleting the last sentence of the subdivision.

SECTION 17. Tennessee Code Annotated, Section 49-5-510, is amended by deleting the language "and any locally negotiated agreement".

SECTION 18. Tennessee Code Annotated, Section 49-5-511(b)(3), is amended by deleting the language "and any locally negotiated agreement".

SECTION 19. Tennessee Code Annotated, Section 49-5-611(a)(5), is amended by adding the following language at the end of the subdivision:

except those working conditions which are prescribed by general law, private act or rules and regulations of the state board of education or the department of education;

SECTION 20. Tennessee Code Annotated, Section 49-5-601(b)(3), is amended by deleting the words "professional employee organizations" and by substituting instead the words "professional employees' organizations or teachers' unions".

SECTION 21. Tennessee Code Annotated, Section 49-5-601(b)(6), is amended by deleting the words "professional employee organization" and by substituting instead the words "professional employees' organization or teachers' union".

SECTION 22. Tennessee Code Annotated, Section 49-5-602, is amended by deleting the language "recognized professional employees' organization" wherever it appears in subdivisions (5) and (8) and by substituting instead the language "teachers' union".

SECTION 23. Tennessee Code Annotated, Section 49-5-602(9), is amended by deleting the language "professional employees' organization" wherever it appears and by substituting instead the language "teachers' union" and by deleting the words "the organization" and by substituting instead the words "the union".

SECTION 24. Tennessee Code Annotated, Section 49-5-602(10), is amended by adding the language ", unions" after the word "associations".

SECTION 25. Tennessee Code Annotated, Section 49-5-602(13), is further amended by adding the language "union," between the language "persons," and the word "organization".

SECTION 26. Tennessee Code Annotated, Section 49-5-603, is amended by adding the language "or unions" between the word "organizations" and the punctuation " , " .

SECTION 27. Nothing in this act shall be construed to abridge or impair a contract or agreement governing terms and conditions of professional service entered into by a board of education and a recognized professional employees' organization

under the Education Professional Negotiations Act before the effective date of this act.

Any such contract or agreement shall remain in full force and effect until the expiration of the contract or agreement.

SECTION 28. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 29. This act shall take effect July 1, 2011, the public welfare requiring it.